

8 JUL 1981

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MEMORANDUM FOR:   
Chief, Legislation Division, OGC

STAT

FROM :   
Deputy Director of Personnel

SUBJECT : Fiscal Year 1982 Intelligence Authorization Bill

REFERENCE : OLC Memorandum 81-0109/33 of 30 June 1981, Same Subject

The Office of Personnel has reviewed the referenced memorandum and endorses the preliminary draft of language proposed for incorporation into the conference appeal letter which is being put together by the IC Staff. We also concur in the comments on some of the substantive legislative portions of the Authorization Bill in question.

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OP/P&PS/PA:  (3 Jul 81)

MEMORANDUM FOR: See Distribution

Chief, Legislation Division, OLC

SUBJECT: Fiscal Year 1982 Intelligence  
Authorization Bill

Attached is a preliminary draft of language which I am proposing for incorporation into the conference appeal letter which is being put together by the IC Staff. I would appreciate having any comments on this language as soon as possible. Please note in particular the language pertaining to section 103 of the House Bill. This language is designed in part to rule out application of section 103 to Economy Act transfers without specifically saying so.

## Attachments

## Distribution

1 - FPH/GLT

[illegible]

1 - [REDACTED]  
1 - OLC Subject (file: FY 82 Intelligence Authorization Bill)  
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OLC:GMC:sf (30 June 1981)

I would also like to comment on some of the substantive legislative portions of the Authorization Bill.

-- I believe that subsection 101(c) of S. 1127 better captures the intent of this provision than does the corresponding section 104 of H.R. 3454.

-- The House Bill contains at section 103 a provision related to notification of expenditures in excess of program authorizations which is not found in the Senate Bill.

This provision was first enacted last year as part of the fiscal year 1981 Authorization. I have no objection to its reenactment, provided there exists a mutual understanding that its requirements pertain to the reprogramming or transfer of appropriated funds among the underlined major programs authorized in the Schedule of Authorizations. If we are not in agreement on the meaning of section 103 I would strongly recommend that the section be deleted from the Bill.

-- Section 503 of S. 1127 contains an important amendment to subsection 5(d) of the Central Intelligence Agency Act of 1949. This amendment clarifies statutory authority for CIA personnel to carry firearms in connection with the performance of the Agency's authorized functions. Although there is no corresponding provision in H.R. 3454, the Permanent Select Committee on Intelligence is familiar with the need for the amendment, having held a hearing on this matter in April of 1979. I urge retention of this provision.

-- The Senate Bill also contains (section 504) a provision related to the unauthorized use of the Central Intelligence Agency name, initials, or seal. A similar provision for the National Security Agency appears at section 507 of the Senate Bill. These provisions are needed to prevent impersonation, solicitation or commercial activity that conveys the impression of official authorization or approval. The provisions would authorize the Attorney General to institute civil proceedings to enjoin the proscribed practices. This is an important provision and I recommend its retention.

-- Section 502 of the House Bill and section 505 of the Senate Bill provide new authorities for allowances, benefits, and travel. Procedurally, I believe that the House Bill's structuring of these authorities as an amendment to section 4 of the CIA Act of 1949 is the preferable approach. With respect to the substantive makeup of these provisions, however, it would appear that the Senate's language better expresses the flexibility which is so necessary in this area. I also believe that it is important for the conferees to make clear that the new benefits, allowances and travel authorities extend to dependents. The Senate's subsection 505(a) is explicit on this point. Finally, I must question the wisdom of subsection 502(b)(5) of the House Bill, which calls for prior submission of implementing regulations (and changes thereto) to the Intelligence Committees. I would note that benefit and travel regulations tend to be in a state of almost constant flux, and that a requirement for prior reporting of changes would undermine the very flexibility and efficiency which the new provisions are designed to achieve. I would urge, therefore, that the conferees agree upon a less burdensome reporting mechanism.

-- Section 510 of S. 1127 contains three provisions designed to protect intelligence personnel against physical assaults, threats, extortion and kidnapping. These provisions have the full endorsement of the Department of Justice. I strongly urge that section 510 be retained in the Bill.

-- Title VI of S. 1127 contains the Defense Intelligence Agency Personnel Management Act of 1981. I fully support the concept of enhanced personnel authorities for DIA, but I am concerned that some of the language now contained in S. 1127 may be overly broad and could, through adverse judicial interpretation, have an inimical impact on analogous CIA and NSA authorities. I have, therefore, attached several suggestions for revisions in Title VI which would provide DIA with the augmented personnel authorities it needs, without the potential for unintended adverse consequences.

CIVILIAN PERSONNEL MANAGEMENT

SEC. 602. (a) Chapter 81 of title 10, United States Code, is amended by inserting the following new section after section 1586:

"§1587. Civilian personnel management in the Defense Intelligence Agency

"(a)(1) The Secretary of Defense (or his designee) may, without regard to the <sup>civil service laws</sup> provisions of title 5 relating to the establishment of (and appointment to) positions in the civil service—

"(A) establish such positions for civilian officers and employees in the Defense Intelligence Agency as may be necessary to carry out the functions of such Agency; and

"(B) appoint individuals to such positions; and

(C) Remove individuals from such positions in the interests of the national security. An action to remove an individual from any such position by a designee pursuant to the authority contained herein shall be appealable to the Secretary of Defense.

"(2) The Secretary of Defense (or his designee) shall fix the rates of basic pay for positions established under paragraph (1) in relation to the rates of basic pay contained in the General Schedule under section 5332 of title 5 for positions subject to such Schedule which have corresponding levels of duties and responsibilities. Except for positions in the Senior Defense Intelligence Executive Service, no officer or employee of the Defense Intelligence Agency may be paid basic compensation at a rate in excess of the highest rate of basic pay contained in such General Schedule.

1 excess of additional compensation authorized by section  
2 5941(a) of title 5 for employees whose rates of basic compen-  
3 sation are fixed by statute.

4       “(c) Nothing in this section or any other law may be  
5 construed to require the disclosure of the organization or any  
6 function of the Defense Intelligence Agency, of any informa-  
7 tion with respect to the activities thereof, or of the names,  
8 titles, salaries, or number of the persons employed by such the  
9 Agency, except for that information required by the Congress  
10 to accomplish normal authorization and appropriation func-  
11 tions.

12       “(1) Notwithstanding the personnel management laws  
13 under title 5, or any other law, the Secretary of Defense  
14 may, in his discretion, terminate the employment of any civil  
15 ian officer or employee of the Defense Intelligence Agency  
16 whenever he deems such termination necessary or advisable  
17 in the interests of the United States.

18       “(2) Any termination under this subsection shall not  
19 affect the right of the officer or employee involved to seek or  
20 accept employment with any other department or agency of  
21 the United States if he is declared eligible for such employ-  
22 ment by the Office of Personnel Management.

23       “(3) The Secretary of Defense may delegate authority  
24 under this subsection only to the Deputy Secretary of De-  
25 fense and the Director of the Defense Intelligence Agency.

Defense  
Intelligence

25

1 ~~An action to terminate any civilian officer or employee by~~  
2 ~~either such officer shall be appealable to the Secretary of~~  
3 ~~Defense."~~

4 (b) The table of sections for chapter 81 of title 10,  
5 United States Code, is amended by inserting after the item  
6 relating to section 1586 the following new item:

"1587: Civilian personnel management in the Defense Intelligence Agency."

7 EARLY RETIREMENT IN THE SENIOR DEFENSE

8 INTELLIGENCE EXECUTIVE SERVICE

9 SEC. 603. (a) Section 8336 of title 5, United States  
10 Code, is amended by redesignating subsection (k) as subsec-  
11 tion (l) and inserting immediately after subsection (j) the fol-  
12 lowing new subsection:

13 "(k) A member of the Senior Defense Intelligence Ex-  
14 ecutive Service who is removed from the Senior Defense In-  
15 telligence Executive Service for less than fully successful  
16 performance after completing 25 years of service or after be-  
17 coming 50 years of age and completing 20 years of service is  
18 entitled to an annuity."

19 (b) Section 8339(h) of title 5, United States Code, is  
20 amended by striking out "section 8336(d), (h), or (j)" and  
21 inserting in lieu thereof "section 8336(d), (h), (j), or (k)"

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7/2/81

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*Tom*

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REMARKS

1 - See Pete's note below.  
Pls review and prepare note  
for Ben's signature to [redacted]  
Let me know if you note any  
problems with this. *Off*

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DO NOT use this form as a RECORD of approvals, concurrences, disposals,  
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